

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

MARITZA MEDINA LOPEZ,)	Case No. ED CV 13-1753-DFM
Plaintiff,)	
v.)	MEMORANDUM OPINION AND
)	ORDER
CAROLYN COLVIN, Acting)	
Commissioner of Social Security,)	
Defendant.)	

Plaintiff Maritza Medina Lopez (“Plaintiff”) appeals from the denial of her application for disability insurance and supplemental security income benefits. On appeal, the Court concludes that the Administrative Law Judge (“ALJ”) erred by failing to consider whether Plaintiff’s lupus was a severe impairment. Therefore, the Commissioner’s decision is reversed and the matter is remanded for further proceedings consistent with this opinion.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed applications for Social Security disability insurance and supplemental security income benefits on June 17, 2008, alleging disability beginning May 4, 2008. Administrative Record (“AR”) 312-14. The ALJ

1 issued an initial decision denying benefits on April 9, 2010. AR 160-68. On
2 September 28, 2011, the Appeals Council remanded the case to the ALJ for
3 further proceedings, including a determination of whether Plaintiff's lupus was
4 a severe impairment. AR 173-76. After two further administrative hearings, the
5 ALJ issued a second decision denying benefits on July 20, 2012. AR 8-31.

6 II.

7 ISSUES PRESENTED

8 The parties dispute whether the ALJ erred in (1) failing to properly
9 consider the opinion of Plaintiff's treating physician, Dr. Symonett; (2) failing
10 to consider whether Plaintiff's lupus was a severe impairment; (3) concluding
11 that Plaintiff was capable of performing her past relevant work; (4) failing to
12 properly consider the opinion of Plaintiff's treating physician, Dr. Blumberg;
13 (5) failing to properly assess Plaintiff's credibility; and (6) not adequately
14 assessing Plaintiff's daughter's testimony. See Joint Stipulation ("JS") at 2-3.¹

15 III.

16 STANDARD OF REVIEW

17 Under 42 U.S.C. § 405(g), a district court may review the
18 Commissioner's decision to deny benefits. The ALJ's findings and decision
19 should be upheld if they are free from legal error and are supported by
20 substantial evidence based on the record as a whole. 42 U.S.C. § 405(g);
21 Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d
22 742, 746 (9th Cir. 2007). Substantial evidence means such relevant evidence as
23 a reasonable person might accept as adequate to support a conclusion.

24 ¹ Because the Court concludes that the ALJ erred in failing to consider
25 whether Plaintiff's lupus was a severe impairment at step two of the sequential
26 evaluation process, the Court does not reach the remaining issues and will not
27 decide whether these issues would independently warrant relief. Upon remand,
28 the ALJ may wish to consider Plaintiff's other claims of error.

1 Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th
 2 Cir. 2007). It is more than a scintilla, but less than a preponderance.
 3 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec. Admin., 466 F.3d
 4 880, 882 (9th Cir. 2006)). To determine whether substantial evidence supports
 5 a finding, the reviewing court “must review the administrative record as a
 6 whole, weighing both the evidence that supports and the evidence that detracts
 7 from the Commissioner’s conclusion.” Reddick v. Chater, 157 F.3d 715, 720
 8 (9th Cir. 1996). “If the evidence can reasonably support either affirming or
 9 reversing,” the reviewing court “may not substitute its judgment” for that of
 10 the Commissioner. Id. at 720-21.

11 IV.

12 DISCUSSION

13 Plaintiff contends that the ALJ erred in failing to consider whether her
 14 lupus² was a severe impairment at step two of the sequential evaluation
 15 process. JS at 13-14, 15-17. The Court agrees.

16 When it remanded this case back to the ALJ, the Appeals Council
 17 expressly noted that the ALJ had failed to consider whether Plaintiff’s lupus
 18 was a severe impairment. The Appeals Council’s remand order provides in
 19 relevant part as follows:

20 It does not appear that the Administrative Law Judge considered
 21 all of the claimant’s impairments in making this determination [of
 22 non-disability]. The claimant’s treating physician has diagnosed
 23 her with Lupus, which has been confirmed by blood testing

24 ² Lupus or systemic lupus erythematosus is a chronic autoimmune
 25 disease in which the body’s immune system mistakenly attacks healthy tissue.
 26 The most common symptoms of lupus are joint pain, inflammation, and
 27 swelling. Systemic Lupus Erythematosus, PubMed Health (last reviewed Feb.
 28 21, 2013), <http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001471/>.

1 The Administrative Law Judge did not evaluate the effect, if any,
 2 of these impairments on the claimant's ability to work. Upon
 3 remand, all medically determinable impairments must be
 4 evaluated.

5 AR 174 (emphasis added). The Appeals Council ordered the ALJ upon
 6 remand to "[g]ive consideration to and make severity findings for all medically
 7 determinable impairments. In doing so, the Judge will determine how these
 8 impairments, singly and in combination, affect the claimant's ability to do
 9 work related activities." AR 175 (emphasis added). Upon remand from the
 10 Appeals Council, the ALJ did not make any finding whatsoever regarding
 11 whether Plaintiff's lupus was a severe impairment.³ See AR 13-14.

12 The existence of a severe impairment is demonstrated when the evidence
 13 establishes that an impairment has more than a minimal effect on an
 14 individual's ability to perform basic work activities. Webb v. Barnhart, 433
 15 F.3d 683, 686-87 (9th Cir. 2005); Smolen v. Chater, 80 F.3d 1273, 1290 (9th
 16 Cir. 1996); 20 C.F.R. §§ 404.1521(a), 416.921(a). The regulations define "basic
 17 work activities" as "the abilities and aptitudes necessary to do most jobs,"
 18 which include physical functions such as walking, standing, sitting, pushing,
 19 carrying; capacities for seeing, hearing and speaking; understanding and

20 ³ The ALJ's failure to follow a remand order is not a proper basis for
 21 reversing or remanding the ALJ's final decision regarding a claimant's
 22 disability. See Strauss v. Comm'r of the Soc. Sec. Admin., 635 F.3d 1135,
 23 1136-1138 (9th Cir. 2011) (concluding that district court erred in awarding
 24 benefits for ALJ's failure to follow remand orders from the Appeals Council
 25 and from the district court without determining whether the claimant was
 26 disabled). "A claimant is not entitled to benefits under the statute unless the
 27 claimant is, in fact, disabled, no matter how egregious the ALJ's errors may
 28 be." Id. at 1138. Thus, regardless of whether the ALJ complied with the
 remand order, the issue before this Court is whether the ALJ's decision is
 based on substantial evidence and is free of legal error. See id.

1 remembering simple instructions; responding appropriately in a work setting;
2 and dealing with changes in a work setting. 20 C.F.R. § 404.1521(b). The
3 inquiry at this stage is “a de minimis screening device to dispose of groundless
4 claims.” Smolen, 80 F.3d at 1290 (citing Bowen v. Yuckert, 482 U.S. 137, 153-
5 54 (1987)). An impairment is not severe only if it is a slight abnormality with
6 “no more than a minimal effect on an individual’s ability to work.” SSR 85-28
7 1985 WL 56856, at *3 (1985); see also Yuckert v. Bowen, 841 F.2d 303, 306
8 (9th Cir. 1988). A “finding of no disability at step two” may only be affirmed
9 where there is a “total absence of objective evidence of severe medical
10 impairment.” Webb, 433 F.3d at 688 (reversing a step two determination
11 “because there was not substantial evidence to show that Webb’s claim was
12 ‘groundless’”).

13 Here, there was sufficient objective evidence in the record that Plaintiff’s
14 lupus was a severe impairment. Plaintiff was diagnosed with Lupus by means
15 of a positive blood test. See AR 524. Plaintiff’s treating physician, Dr. Elmer
16 Symonett, concluded that Plaintiff’s lupus was sufficiently severe to cause
17 various functional limitations in her ability to stand and walk. AR 669-70. Dr.
18 Symonett concluded that Plaintiff’s “constant moderate to severe pain with
19 body aches” was most likely due, at least in part, to her lupus. AR 669. This
20 indicates a level of impairment that at least meets the “de minimis”
21 requirement at the second stage of the inquiry. See Smolen, 80 F.3d at 1290.

22 Contrary to the Commissioner’s contention, the Court cannot say that
23 ALJ’s failure to consider Plaintiff’s lupus was harmless. The ALJ concluded
24 that Plaintiff retained the residual functional capacity (“RFC”) to perform light
25 work, including the ability to lift and/or carry twenty pounds occasionally and
26 ten pounds frequently; sit, stand or walk for six hours out of an eight-hour
27 work day; frequently kneel, stoop, crawl, crouch and climb; and that she had
28 no restrictions on the use of her hands. AR 15. If the ALJ determines that

1 Plaintiff's lupus is a severe impairment at step two, this could potentially affect
2 her RFC, which in turn might impact whether she is able to perform her past
3 relevant work, or, alternatively, any work available in the national economy.

4 Because the ALJ completely failed to address whether Plaintiff's lupus
5 was a severe impairment, the Court is unable to determine whether the ALJ's
6 step two determination was free of error and supported by substantial
7 evidence. See Smolen, 80 F.3d at 1282 (holding that ALJ erred in limiting his
8 review of the record to certain impairments and ignoring medical evidence of
9 other impairments without any explanation). The Court therefore must reverse
10 the ALJ's decision denying benefits.

11 The decision whether to remand for further proceedings is within this
12 Court's discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000).
13 Where no useful purpose would be served by further administrative
14 proceedings, or where the record has been fully developed, it is appropriate to
15 exercise this discretion to direct an immediate award of benefits. Id. at 1179
16 (noting that "the decision of whether to remand for further proceedings turns
17 upon the likely utility of such proceedings"); see also Benecke v. Barnhart, 379
18 F.3d 587, 593 (9th Cir. 2004). A remand is appropriate, however, where there
19 are outstanding issues that must be resolved before a determination of
20 disability can be made and it is not clear from the record that the ALJ would
21 be required to find the claimant disabled if all the evidence were properly
22 evaluated. Bunnell v. Barnhart, 336 F.3d 1112, 1115-16 (9th Cir. 2003); see
23 also Connett v. Barnhart, 340 F.3d 871, 876 (9th Cir. 2003).

24 Here, the evidence shows an impairment that might be considered
25 "severe" within the meaning of the Social Security Regulations, but which
26 might not prevent Plaintiff from performing her past relevant work or work in
27 the national economy. However, that is not a determination that this Court
28 can make. Accordingly, the case is remanded for further evaluation in

1 accordance with the five-step sequential process.

2 V.

3 **CONCLUSION**

4 For the reasons stated above, the decision of the Social Security
5 Commissioner is REVERSED and the matter is REMANDED for further
6 proceedings consistent with this opinion.

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8 Dated: April 7, 2014

A handwritten signature in dark ink, appearing to read 'Douglas F. McCormick', is written over a horizontal line.

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11 DOUGLAS F. McCORMICK
12 United States Magistrate Judge
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